

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STEVEN McDERMOTT AND
STACEY McDERMOTT

Plaintiffs

V.

FEDEX GROUND PACKAGE
SYSTEMS, INC. AND
T.S. PRUITT

Defendants

[illegible]

) CIVIL ACTION NO.04-CV-12253MLW

AFFIDAVIT OF PLAINTIFFS COUNSEL

I, Joseph M. Mahaney, being duly sworn, depose and say, based upon my own personal knowledge the following:

1. I am the attorney for the Plaintiffs in the above captioned matter;
2. J.T. Fosbrink of Dunbar, Pennsylvania, an essential witness to this civil action, is suffering from a form of cancer most likely making him unavailable to testify;
3. Mr. Fosbrink was driving a tractor trailer for Arsenberger Trucking of 681 Mill Run Road, Mill Run, Pennsylvania on February 7, 2003, the date of the accident;
4. Mr. Fosbrink was a witness to this incident, saw the FedEx truck strike the Plaintiffs truck, and spoke with Steven McDermott immediately after the collision;
5. On or about September 1, 2005, as part of the investigation in this matter I spoke by telephone with representatives of Arsenberger Trucking, 681 Mill Run Road, Mill Run, Pennsylvania, asking to speak with J. T. Fosbrink;

6. I was told that J.T. Fosbrink had been recently been diagnosed with an advanced stage of cancer located in his head, face, and brain, that he no longer worked at Arsenberger Trucking and was home with his family;
7. On September 5, 2005, I spoke with Mrs. J. Fosbrink, the wife of J.T. Fosbrink, who told me that her husband did in fact have cancer and was too ill to speak with me or to be able to give a statement under oath;
8. On September 6, 2005, I wrote to Mrs. J. Fosbrink (see attached "B") requesting an opportunity to speak with her husband;
9. I received no response from Mrs. J. Fosbrink and did not pursue the statement, given the tone of the last conversation with the wife;
10. On Monday, May 8, 2006, I spoke with Mrs. J. Fosbrink by telephone again and asked about her husbands condition;
11. Mrs. Fosbrink informed me that her husband had been undergoing an extensive amount of chemotherapy, mainly to his brain;
12. Again Mrs. Fosbrink stated her husbands cancer has significantly affected his brain and central nervous system and has been receiving substantial radiation treatment.
13. Mrs. Fosbrink states Mr. Fosbrink has no memory of the accident and therefore is unlikely to contribute to this matter;

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 22ND DAY OF MAY, 2006.



Joseph M. Mahaney